

## § 205.214

## 9 CFR Ch. II (1–1–09 Edition)

Section, and it must be possible to distinguish the entries to which these provisions apply from the other entries.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

### § 205.214 **Litigation as to whether a system is operating in compliance with the Section.**

(a) The requirements for a system in subsection (c) are written as the definition of the term “central filing system,” so that failure of a system to meet any such requirement, either at the time of its establishment or later, will mean that it is not a “central filing system” as defined.

(b) The issue whether a system, after certification, is operating in compliance, thus whether it is a “central filing system” as defined, could be litigated and ruled on in a case involving only private parties, such as a lender and a buyer of a farm product. The only immediate effect of a finding in such a case, that a system is not a “central filing system” as defined, would be that the rights of the secured party in the case would be as if the State had no system. However, others would be in doubt as to whether they could safely rely on the same system.

## **PART 206—SWINE CONTRACT LIBRARY**

Sec.

206.1 Definitions.

206.2 Swine contract library.

206.3 Monthly report.

AUTHORITY: Sec. 941, Pub. L. 106–78, 113 Stat. 1135; 7 CFR 2.22 and 2.81.

SOURCE: 68 FR 47826, Aug. 11, 2003, unless otherwise noted.

### § 206.1 **Definitions.**

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

*Accrual account.* (Synonymous with “ledger,” as defined in this section.) An account held by a packer on behalf of a producer that accrues a running posi-

tive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

*Base price.* The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

*Contract.* Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

*Contract type.* The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

*Formula price.* A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

*Ledger.* (Synonymous with “accrual account,” as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects

producer and packer rights and obligations under the contract.

*Negotiated purchase.* A purchase, commonly known as a “cash” or “spot market” purchase, of swine by a packer from a producer under which:

(1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

*Noncarcass merit premium or discount.* An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

*Other market formula purchase.* A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to:

(1) A price formula based on one or more futures or options contracts;

(2) A price formula based on one or more feedstuff markets, such as the market for corn or soybeans; or

(3) A base price determination using more than one market as its base where at least one of those markets would be defined as an “other market formula purchase.”

*Other purchase arrangement.* A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine.

*Packer.* Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part only apply to a packer purchasing at least 100,000 swine per year and slaughtering swine at a feder-

ally inspected swine processing plant that meets either of the following conditions:

(1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

*Producer.* Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).

*Swine.* A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

*Swine or pork market formula purchase.* A purchase of swine by a packer in which the pricing determination is a formula price based on a market for swine, pork, or a pork product, other than a futures contract or option contract for swine, pork, or a pork product.

#### § 206.2 Swine contract library.

(a) *Do I need to provide swine contract information?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer in § 206.1.

(b) *What existing or available contracts do I need to provide and when are they due?* Each packer must send, to the Grain Inspection, Packers and Stockyards Administration (GIPSA), an example of each contract it currently has with a producer or producers or that is currently available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1. This initial submission of example contracts is due to GIPSA on the first business day of the month following the determination